

Remarks

Claims 1-11 are pending in the subject application. Claims 1-11 are rejected. Claim 11 is objected to. Claims 1, 5, 7, and 11 have been amended. Claims 8 and 10 have been cancelled. No new matter has been added.

On January 6, 2010, the undersigned contacted the Examiner to determine the reference numbers corresponding to references cited in the subject Office Action. Specifically, reference number for Prenger et al. and Kaltz et al. were omitted from the subject Office Action. These reference numbers were provided by the Examiner to be US 5,667,269 and 4,516,806, respectively.

Claim Rejections – 35 USC §112:

Claims 2, 5, 7, and 11 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states that claim 2 is indefinite in “and/or”. The Applicants have amended claim 2 to replace “and/or” with “or” to overcome this rejection.

With respect to claim 5, the Examiner states that “closure mating” is confusing. The Applicants have amended claim 5 to replace “closure mating” with “mating closure element” and overcome this rejection.

The Examiner also states that claim 7 is indefinite in “especially”. The Applicants have amended claim 7 remove the word “especially” and overcome this rejection.

The Examiner states that claim 11 “appears indefinite as it does not limit claim 1 in its functional phrase.” The Applicants have rewritten claim 11 as an independent claim by replacing the reference to claim 1 with the actual limitations of claim 1. No new matter has been added to overcome this rejection.

Claim Objections:

Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim because “for releasable attachment...” does not limit the subject matter of claim 1.

As discussed above, the Applicants have rewritten claim 11 as an independent claim by replacing the reference to claim 1 with the actual limitations of claim 1 and overcome this objection.

Accordingly, this objection has been overcome and should be withdrawn.

Drawings:

The drawings are objected to under 37 CFR 1.83(a) because the drawings must show every feature of the invention specified in the claims. The Examiner states that “the control unit, claim 1, the activated closure and mating closure element of claim 2, details of claim 8 and 10 must be shown or the feature(s) canceled from the claim(s).”

The Applicants have amended the drawing to include a box indicating the control unit “15” that is now shown to be interconnected with the sensor 12 and the closure device 3. Support for this amendment can be found in paragraphs [0028], [0034], [0036], and [0038]. Paragraph [0028] states, in part, “...an electronic control unit (not further shown in the diagram) is provided, which in the present case is integrated into the closure device 3, but in another embodiment according to the invention, it can also be arranged separately.” Paragraph [0034] states, in part, “[t]he control unit of the drive unit 8 is signal-connected to a sensor 12...[t]he control unit then operates the drive unit 8...” Paragraph [0036] states, in part, “...detected by the sensor 12, which is in signal connection with the control unit of the drive unit 8, whereupon the control unit operates the drive unit 8...” Paragraph [0038] states, in part, “...operating element 14, in the present case, is designed as a pushbutton, and it is also in signal connection with the control unit of the drive unit 8.” Additionally, paragraphs [0028], [0034], [0036], and [0038] have been amended to include element “15” with the control unit cited therein. No new matter has been added.

With respect to claim 2, the “activated closure” and the “mating closure” elements, as described by the Examiner, are indicated in claim 2 as being “closure element (6)” and “mating closure element (7)”. Corresponding element numbers 6 and 7 are already shown in the Figure. Accordingly, no correction is believed to be required and this objection should be withdrawn for at least this reason.

Claims 8 and 10 have been cancelled. Accordingly, this rejection is moot and should be withdrawn.

Claim Rejections – 35 USC §103:

Claims 1-3, 5-7, and 9 are rejected under 35 USC §103(a) as being unpatentable over Okada et al. in view of either Prenger et al. or Kaltz et al. Claim 4 is rejected under 35 USC §103(a) as being unpatentable over Okada et al. in view of Prenger et al. or Kaltz et al., as applied to claim 1 and further in view of Hacker. Claims 8, 10, and 11 are rejected under 35

USC §103(a) as being unpatentable over Okada et al. in view of Prenger et al. or Kaltz et al. as applied to claim 1 above and further in view of Hähn et al.

Obviousness is a question of law based on factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). MPEP § 2141. The Graham factual inquiries include:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art; and
- (C) resolving the level of ordinary skill in the art. *Id.*

“The question of obviousness must be resolved on the basis of these factual determinations. While each case is different and must be decided on its own facts, the *Graham* factors, including secondary considerations when present, are the controlling inquiries in any obviousness analysis.” *Id.*

“Once the Graham factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.” MPEP § 2141(III). According to MPEP § 2142, “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” (emphasis added). “[R]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”” MPEP § 2142 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Rejection of claims 1-3, 5-7, and 9 under Section 103(a) over Okada et al. in view of either Prenger et al. or Kaltz et al.:

The Examiner states that “Okada et al. have all claimed details less the handle for manually moving the top, a detail known in this art as evidenced by the patents to both Prenger et al. or Kaltz et al. in the shape of the front bow, fully graspable for closing.” The Examiner further states that “[i]t would have been obvious to one of ordinary skill to provide in Okada et al. a handle shaped front bow as taught by either Prenger et al. or Kaltz et al. in order to move the tope manually upon automatic system failure...”

Claim 1 has been amended to recite, in part, “[a] closure device to close a convertible top (1)...a handle element (13), by which the convertible top (1) is movable manually between a *pre-closure position* at a spacing from the body-frame part (4) and a *catching*

position, in which the convertible top (1) is closable automatically, and wherein the closure device (3) includes a sensor (12), by which assumption of the catching position of the convertible top (1) is detectable and which sends signals to a control unit of the drive unit (8), and the control unit, based on the signal of sensor (12) actuates the drive unit (8) to activate automatically the at least one closure element (6) or mating closure element (7) to attach the convertible top (1).” (Emphasis added).

Therefore, the closure device, as claimed in claim 1, combines a manually only operated convertible top with a fully automatically operated closure element. The manual only closure is provided only *until* a catching position is achieved and the fully automatically operated closure is provided *after* the catching position of the convertible top is achieved to provide the remainder of the closing movement of the convertible top.

Okada et al. discloses a fully automatically operated convertible top of a vehicle having three sensors that only detect that: the movable roof is closed; that the locking mechanism is in the locked condition; and that the driving mechanism has reached an excessive load condition. Okada et al. fails to disclose that a catching position is not only reached, but also sensed by a corresponding sensor. Additionally, Okada et al. fails to disclose any *partial* automatic closure that is in addition to any partial manual closure.

While Prenger et al. and Kaltz each disclose the front bow, as stated by the Examiner, Prenger et al. and Kaltz each fail to disclose any *partial* manual closure in moving the convertible top.

Instead, Prenger et al. is silent as to how the connection between the convertible top and the body frame part is made. More specifically, referring to col. 2, lines 1-3, Prenger et al. states “a connecting zone 10, which has a receptacle 11 for the locking device for the top.” The connecting zone 10 of Prenger et al. does not teach that any part of the connection is *partially* manual and/or *partially* automatic. Furthermore, Prenger et al. also fails to teach any sensors to sense that a catching position is achieved, as required by claim 1.

Likewise, Kaltz only discloses that the closure of convertible top 12 is fully manual, as stated in col. 5, lines 45-50. More specifically, Kaltz states that “[t]he convertible top 12 is also provided with a latch mechanism for latching the forward end of the top 12 to the vehicle 10 when the top 12 is in the raised position closing the vehicle body...a pair of pivotal handles are mounted on the front cross-bow 18 on the top 12 and operate a pivotal latch member 150.” Therefore, Kaltz also fails to disclose that any part of the connection is *partially* manual or *partially* automatic. Also, Kaltz et al. also fails to teach any sensors to sense that a catching position is achieved, as required by claim 1.

While the Examiner refers to Prenger et al. or Kaltz et al. to show that manual movement could be provided, there would be no clear motivation to modify the cited references in this way. As stated above, Prenger et al. is silent as to how the movement is made and Kaltz et al. only teaches manual movement. Therefore, neither reference discloses partial manual movement or a sensor for sensing a catching position, as required by claim 1. Even if Okada et al. was combined with the teachings of Kaltz et al. or Prenger et al., the convertible top would not function as required by claim 1. Instead, the convertible top would operate either *entirely automatically* (as disclosed in Okada et al.) or *entirely manually* (as disclosed in Kaltz et al.).

Therefore, the rejection of claim 1 is overcome and is allowable for at least this reason. Also, claims 2, 3, 5-7, and 9, which depend from allowable claim 1, are allowable for at least the same reasons that claim 1 is allowable.

Rejection of claim 4 under Section 103(a) over Okada et al. in view of either Prenger et al. or Kaltz, as applied to claim 1, and further in view of Häcker:

The Examiner states that “[i]t would have been obvious to one of ordinary skill to provide in the combination above a release operating element 26 as taught by Hacker in order to control the pre-opening of the roof or conversely to release the latch upon CPU failure.”

Claim 4 depends from allowable claim 1 and is allowable for at least the same reasons that claim 1 is allowable.

Rejection of claim 8, 10, and 11 under Section 103(a) over Okada et al. in view of either Prenger et al. or Kaltz, as applied to claim 1, and further in view of Hahn et al.:

The Examiner states that “[i]t would have been obvious to one of ordinary skill to provide in the above combination above hydraulic motor operation as taught by Hahn et al. in order to reduce electrical load and further obvious to mount the drive on the body frame (windshield header) as taught by Hahn et al. in figure 2 and column 2, lines 34-35.”

Claims 8 and 10 have been cancelled.

As discussed above, claim 11 has been rewritten as an independent claim by replacing the reference to claim 1 with the actual limitations of claim 1, as also amended herein. Accordingly, the rejection of claim 11 is also allowable for at least the same reasons that claim 1 is allowable.

Conclusion

It is therefore respectfully submitted that all claims are in condition for allowance, which action is requested.

Respectfully submitted,

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Date: 2/2/10

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